



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2021-0480; FRL-10676-01-R6]

Air Plan Approval; Texas; New Source Review Updates for Project Emissions

Accounting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve portions of a revision to the Texas State Implementation Plan (SIP) submitted by the Texas Commission on Environmental Quality (TCEQ) on July 9, 2021. The revision includes updates to the Texas Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) permitting programs to incorporate recent Federal New Source Review (NSR) regulations for Project Emissions Accounting (PEA).

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2021-0480, at <https://www.regulations.gov> or via email to wiley.adina@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not

consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Adina Wiley, (214) 665-2115, wiley.adina@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Adina Wiley, EPA Region 6 Office, Air Permits Section (ARPE), 214-665-2115, wiley.adina@epa.gov. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via <https://www.regulations.gov>. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that air quality meets the EPA’s National Ambient Air Quality Standards (NAAQS). These ambient standards are established under section 109 of the Act and they currently address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. The state’s air regulations are contained in its SIP, which is basically a clean air plan. Each state is responsible for

developing SIPs to demonstrate how the NAAQS will be achieved, maintained, and enforced. The SIP must be submitted to the EPA for approval, and any changes a state makes to the approved SIP also must be submitted to the EPA for approval.

Section 110(a)(2)(C) of the CAA requires states to develop and submit to the EPA for approval into the SIP, preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the New Source Review (NSR) SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Minor NSR. The EPA codified minimum requirements for these State permitting programs including public participation and notification requirements at 40 CFR 51.160 through 51.164. Requirements specific to construction of new stationary sources and major modifications in nonattainment areas are codified in 40 CFR 51.165 for the NNSR program. Requirements for permitting of new stationary sources and major modifications in attainment areas subject to PSD, including additional public participation requirements, are found at 40 CFR 51.166. As the EPA updates its implementing rules for NSR, states and localities similarly are required to update their SIP-approved rules to ensure consistency with the minimum Federal NSR permitting requirements.

On November 24, 2020, the EPA promulgated final revisions to the applicability regulations of the major NSR permit programs. A two-step applicability test is used in the PSD and NNSR programs to determine whether a proposed project will be subject to major NSR requirements. In Step 1 of the analysis, the applicant determines if the proposed project would result in a significant emissions increase of a regulated NSR pollutant. If there is a significant emissions increase, the applicant proceeds to Step 2 and determines if there is a significant net emissions increase. In the November 24, 2020,

final rule, the EPA clarified that emissions increases *and* decreases associated with the proposed project could be used in Step 1 of the applicability test; this is known as project emissions accounting (PEA). The clarifications made to the PSD and NNSR programs are not required elements of the Federal program. States with SIP-approved PSD and NNSR programs that want to use PEA in PSD and NNSR applicability tests must either determine that the state is able to interpret the existing state rules such that PEA is already allowed, or the state must adopt and submit a revision to the SIP that is consistent with the PEA revisions.

On July 9, 2021, the TCEQ submitted revisions to the Texas SIP that update the Texas PSD and NNSR programs to allow for PEA consistent with the EPA's November 24, 2020, final rule at 85 FR 74890. The July 9, 2021, submittal also included the repeal of obsolete provisions from the Texas permitting program.

II. The EPA's Evaluation

The accompanying Technical Support Document for this action includes a detailed analysis of the submitted revisions to the Texas SIP which are the subject of this proposed rulemaking. Our analysis indicates that the July 9, 2021, SIP revision was developed in accordance with the CAA and the State provided reasonable notice and public hearing.

A. Evaluation of Revisions to 30 TAC Section 116.12 – Nonattainment and Prevention of Significant Deterioration Review Definitions

The TCEQ submitted revisions to the definition of "Project emissions increase" at 30 TAC Section 116.12(32) to implement the PEA. The revisions are consistent with the EPA's November 24, 2020, final rule at 85 FR 74890. As stated above, the EPA's implementing regulations for NSR establish a two-step process for determining major NSR applicability for projects at stationary sources. Under Step 1 of the applicability determination, the project itself is analyzed to determine if there is a significant emissions

increase of the project. In our November 24, 2020, final rule the EPA clarified that this Step 1 analysis may consider the increases and decreases associated with the project. If the Step 1 analysis determines there is a significant emissions increase, then the applicant proceeds to Step 2 of the applicability determination whereby the applicant must perform contemporaneous netting and account for the project emission increases and the emission increases and decreases attributable to other projects at the stationary source within the contemporaneous window to determine if there is a significant net emissions increase. The effect of the revisions to the Texas definition is that for purposes of determining whether a source or modification is major for PSD or NNSR permitting, the Step 1 analysis of the project itself will include increases and decreases associated with the project to determine if the project results in a “significant emissions increase”, as required under 30 TAC Section 116.12(32)(D). If there is an increase, the second step of the applicability process is to determine if there is a “significant net emissions increase”. Step 2 of the applicability determination is unchanged by the submitted SIP revision.

B. Evaluation of Revisions to 30 TAC Section 116.150 – New Major Source or Major Modification in Ozone Nonattainment Areas

The submitted revisions to 30 TAC Section 116.150(c)(1) and (c)(2) are necessary to maintain consistency with the EPA’s final rule on November 24, 2020, to show that project emissions increase will include project related increases and decreases. These revisions work in connection with the revised definition of “project emissions increase” at 30 TAC Section 116.12(32). The TCEQ also submitted non-substantive edits to 30 TAC Section 116.150(a), (b), and (c) to correct non-substantive, grammar-related provisions.

C. Evaluation of Revisions to 30 TAC Section 116.151 – New Major Source or Major Modification in Nonattainment Area Other Than Ozone

The submitted revisions to 30 TAC Section 116.151(b) are necessary to maintain consistency with the EPA's final rule on November 24, 2020, to show that project emissions increase will include project related increases and decreases. These revisions work in connection with the revised definition of "project emissions increase" at 30 TAC Section 116.12(32).

D. Evaluation of Revisions to 30 TAC Section 116.160 – Prevention of Significant Deterioration

The submitted revisions to 30 TAC Section 116.160(b)(1) and (b)(2) are necessary to maintain consistency with the EPA's final rule on November 24, 2020, to show that project emissions increase will include project related increases and decreases. These revisions work in connection with the revised definition of "project emissions increase" at 30 TAC Section 116.12(32).

III. Proposed Action

Pursuant to section 110 of the Act, we are proposing to approve the submitted revisions to the Texas SIP that update the PSD and NNSR permitting requirements to maintain consistency with the Federal NSR program requirements by adopting the provisions for PEA and repeal obsolete requirements. Our analysis found that the submitted revisions are consistent with the CAA and the EPA's regulations, policy and guidance for permitting SIP requirements. The EPA is proposing approval of the following revisions adopted on June 9, 2021, effective on July 1, 2021, submitted to the EPA on July 9, 2021:

- Revisions to 30 TAC Section 116.12 – Nonattainment and Prevention of Significant Deterioration Review Definitions,
- Revisions to 30 TAC Section 116.150 – New Major Source or Major Modification in Ozone Nonattainment Areas,

- Revisions to 30 TAC Section 116.151 – New Major Source or Major Modification in Nonattainment Area Other than Ozone, and
- Revisions to 30 TAC Section 116.160 – Prevention of Significant Deterioration.

IV. Environmental Justice Considerations

The EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within Texas.¹ The EPA then compared the data to the national average for each of the demographic groups. The results of this analysis are being provided for informational and transparency purposes. The results of the demographic analysis indicate that, for populations within Texas, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) is less than the national average (40.3 percent versus 59.3 percent). Within people of color, the percent of the population that is Black or African American alone is lower than the national average (13.2 percent versus 13.4 percent) and the percent of the population that is American Indian/Alaska Native is lower than the national average (1.1 percent versus 1.3 percent). The percent of the population that is Hispanic or Latino is significantly higher than the national average (40.2 percent versus 18.9 percent). The percent of the population that is two or more races is lower than the national averages (2.2 percent versus 2.9 percent). The percent of persons in poverty in Texas is higher than the national average (14.2 percent versus 11.6 percent). The percent of persons aged 25 years and older with a high school diploma in Texas is slightly lower than the national average (84.4 percent versus 88.5 percent), and the percent with a Bachelor's degree or higher is below the national average (30.7 percent versus 32.9 percent).

¹ See the United States Census Bureau's QuickFacts on Texas at <https://www.census.gov/quickfacts/fact/table/TX,US/PST045221>. This information is also available in the rulemaking docket.

This action proposes to approve revisions to the Texas PSD and NNSR programs, consistent with the Federal permitting programs. Final approval of these revisions to the Texas permit programs will continue to enable the State of Texas to implement control strategies and permitting programs. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

V. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Texas regulations as described in Section III of this preamble, Proposed Action. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
 - Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
 - Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including

those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as is described above in the section titled, “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 28, 2023.

Earthea Nance,
Regional Administrator, Region 6.

